

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

May 24, 2022 at 1:30 p.m.

1.	20-23000 -C-13	RITA FLORES	MOTION TO MODIFY PLAN
	MRL -2	Mikalah Liviakis	4-5-22 [38]

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 49 days' notice was provided. Dkt. 41.

<p>The Motion to Modify Plan is denied.</p>
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The debtor filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

Russell Greer, Chapter 13 Trustee, filed an Opposition (Dkt. 42) on May 10, 2022, opposing confirmation on the following grounds:

1. The debtor is delinquent in paying all sums required by the plan;
2. The debtor has failed to file and serve a modified plan as a separate document as required by LBR 3015-1(d)(2).

DISCUSSION

The debtor is \$2,565 delinquent in plan payments. Declaration, Dkt. 43. Delinquency indicates that the plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6). Further, the debtor has failed to file and serve a modified plan pursuant to LBR 3015-1(d)(2).

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is denied, and the plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Modify filed by the debtor's successor in interest, Carrie Horton, having been presented to the

May 24, 2022 at 1:30 p.m.

court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied, and the plan is not confirmed.

2. [22-20502](#)-C-13 JOHN/SHANNON ALVARADO OBJECTION TO CONFIRMATION OF
[NLG](#)-1 Mikalah Liviakis PLAN BY CREDITOR BANK UNITED,
N.A.
4-21-22 [[19](#)]

No Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 31 days' notice was provided. Dkt. 22.

The Objection to Confirmation of Plan is ~~xxxx~~

Creditor, Bank United N.A. ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan fails to cure Creditor's pre-petition arrears.

DEBTORS' OPPOSITION

Debtors filed an Opposition on May 10, 2022. Dkt. 26. Debtor declares that she called Carrington Mortgage (mortgage servicer) on or about April 26, 2022 and confirmed that she is current on mortgage payments. Dkt. 27.

DISCUSSION

At the hearing xxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Bank United N.A. , having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is XXXXXX

3. [21-24304](#)-C-13 ARMANDO/BETH DEL REAL CONTINUED OBJECTION TO
[KMM](#)-1 Julius Cherry CONFIRMATION OF PLAN BY WELLS
FARGO BANK, N.A.
2-22-22 [[15](#)]

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 28 days' notice was provided. Dkt. 18.

The Objection to Confirmation of Plan is sustained.

Wells Fargo Bank, N.A. as Trustee for the MASTR Asset Backed Securities Trust 2007-NCW Mortgage Pass-Through Certificate Series 2007-NCW ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. Plan fails to cure the entire amount of pre-petition arrears of \$40,847.02.
2. The plan payment includes all of the debtors' monthly net income but is insufficient to provide for the additional arrears of \$8,347.02 that are not included in the debtors' plan.

DISCUSSION

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

Notwithstanding whether the plan provides for the prepetition arrearage as Creditor argues, the debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Wells Fargo Bank, N.A. as Trustee for the MASTR Asset Backed Securities Trust 2007-NCW Mortgage Pass-Through Certificate Series 2007-NCW, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

4. [21-20009](#)-C-13 CYNTHIA ARIETA
[PGM](#)-1 Peter Macaluso

MOTION TO VACATE DISMISSAL OF
CASE
5-2-22 [[60](#)]

DEBTOR DISMISSED: 04/08/2022

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 22 days' notice was provided. Dkt. 66.

The Motion to Vacate is Granted, and the Order to Dismiss Case for Failure to Make Payments (Dkt. 56) is vacated.

The adult children of the Debtor, Cynthia Lynn Arieta, filed this Motion seeking to vacate this court's Order (Dkt. 56) dismissing the case on the basis that debtor failed to make plan payments because the debtor died from complications of COVID-19 on September 17, 2021.

The court issued its Order dismissing the case after the Trustee filed a motion to dismiss for failure to make plan payments. The children represent that they were not aware of the motion to dismiss because they had made a \$5,000 payment that they thought had cured any arrears in the case.

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]-[2] (3d ed. 2010); see also *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463 (citations omitted).

Another consideration is the importance of finality of judgments. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

DISCUSSION

A review of the docket shows no objection to the court vacating the order to dismiss. The court finds that the movants have shown there are other reasons that justify relief.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Vacate filed by The adult children of the Debtor, Cynthia Lynn Arieta, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the Order to Dismiss (Dkt. 56) is vacated.

5. [22-20511](#)-C-13 JOANNE ASPIRAS
[APN](#)-1 Peter Cianchetta

OBJECTION TO CONFIRMATION OF
PLAN BY GLOBAL LENDING SERVICES
LLC
4-19-22 [[15](#)]

Thru #6

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 34 days' notice was provided. Dkt. 20.

The Objection to Confirmation of Plan is sustained.

Creditor, Global Lending Services LLC ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan does not provide for the full amount of Creditor's claim including arrears.

DISCUSSION

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

Notwithstanding whether the plan provides for the prepetition arrearage as Creditor argues, the debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Global Lending Services LLC, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 33 days' notice was provided. Dkt. 24.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The 341 meeting of creditors has not been conducted,
2. The plan is infeasible because the payments are less than necessary, the plan fails to state monthly dividend for attorney's fees, the debtor's have not provided documents supporting or verifying rental income, and debtor's scheduled income does not match with the pay advices provided to the Trustee.
3. Debtor has not provided 6 months of income data for the debtor or the debtor's non-filing spouse.
4. Debtor has not proposed the plan in good faith because she fails to list Debtor's prior Chapter 13 filing that was filed on July 8, 2021 and dismissed on January 17, 2022.

DISCUSSION

A review of the docket shows that the 341 meeting of the creditors was held on April 28, 2022. The docket further shows that the debtor appeared and the meeting has been concluded as to the debtor.

However, the debtor has not demonstrated the plan is feasible because the plan terms require a higher payment than what is proposed. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the

Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 35 days' notice was provided. Dkt. 37.

The Motion to Confirm is denied.

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 36) filed on April 19, 2022.

Ford Motor Credit Company LLC (FMCC) filed an Opposition (Dkt. 40) on April 21, 2022, opposing confirmation on the following grounds:

1. The plan fails to provide for the proper interest rate in conformance with 11 U.S.C. § 1325(a)(5)(B)(ii).

The Chapter 13 Trustee, Russell Greer ("Trustee"), also filed an opposition (Dkt. 45) opposing confirmation on the following grounds:

1. The plan classifies the LoanCare LLC as a class 4 creditor, however; the claim is in default and is not properly classified,

2. The plan does not provide for the priority claim filed by the Internal Revenue Service,

3. The debtor's Disclosure of Compensation of Attorney for Debtor states that he agreed upon fee does not include judicial lien avoidances and relief from stay actions, which is contrary to the "No Look Fee",

4. Debtor has admitted his 2020 and 2021 income tax returns have not been filed,

5. The plan fails the liquidation test because there are non-exempt assets that are available for non-priority general unsecured creditors,

6. The plan is not feasible because the payment does not provide for Trustee compensation and expense.

DISCUSSION

Creditor opposes confirmation on the basis that the plan proposes paying its claim at 4.75 percent interest. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court

supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 3.5%, plus a 1.25% risk adjustment, for a 4.75% interest rate.

However, the debtor has not filed all required tax returns. 11 U.S.C. §§ 1308, 1325(a)(9). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1). Additionally, the debtor has not properly classified all creditors or provided for all priority claims, and fails the liquidation test.

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Motion is denied, and the plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Mark Anthony Enos, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied, and the plan is not confirmed.

8. [22-20135](#)-C-13 RENITA GRAVES-DIXON
[RDG](#)-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
5-5-22 [[47](#)]

Final Ruling: No appearance at the May 24, 2022 hearing is required.

**The Objection to Confirmation is dismissed without
prejudice.**

The trustee having filed an Ex Parte Motion to Dismiss the pending Objection on May 19, 2022, Dkt. 63; no prejudice to the responding party appearing by the dismissal of the Objection; The trustee having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the debtor; the Ex Parte Motion is granted, the trustee's **Objection is dismissed without prejudice, the court removes this Objection from the calendar, and the Chapter 13 Plan filed on March 18, 2022, is confirmed.**

Counsel for the debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Trustee for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

9. [21-22036](#)-C-13 MEGAN ADCOCK
[GC-2](#) Julius Cherry

MOTION TO CONFIRM PLAN
3-15-22 [[59](#)]

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 70 days' notice was provided. Dkt. 64.

The Motion to Confirm is ~~xxxxxx~~

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 63) filed on March 15, 2022.

The Chapter 13 Trustee filed an Opposition (Dkt. 69) on April 5, 2022, opposing confirmation on the following grounds:

1. The plan fails the liquidation analysis because the plan does not provide for interest at the Federal Judgement Rate on the amount owed to the general unsecured creditors.
2. The trustee requests that language in the order confirming plan include that debtor shall pay off the plan in full from the receipt of funds from her mother's estate no later than December 25, 2022.

DISCUSSION

At the hearing ~~xxxxxx~~

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Megan Adcock, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is ~~xxxxxx~~

10. [21-21864](#)-C-13 GUNVANT PATEL
[GEL](#)-7 Gabriel Liberman

MOTION FOR COMPENSATION FOR
GABRIEL E. LIBERMAN, DEBTORS
ATTORNEY(S)
4-26-22 [[116](#)]

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 28 days' notice was provided. Dckt. 121.

The Motion for Allowance of Professional Fees is Granted.

Gabriel Liberman filed this first and final request seeking approval of compensation for attorney services provided to Gunvant Mangubhai Patel.

Fees are requested for the period May 20, 2021, through April 21, 2021. The movant requests fees in the amount of \$12,480.00 and costs in the amount of \$173.00.

DISCUSSION

The court finds that the hourly rates are reasonable and that the movant effectively used appropriate rates for the services provided. Final fees in the amount of \$12,480.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 trustee from the available plan funds in a manner consistent with the order of distribution in a Chapter 13 case.

Final costs in the amount of \$173.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 trustee from the available plan funds in a manner consistent with the order of distribution in a Chapter 13 case

The court authorizes the Chapter 13 trustee to pay the fees and costs allowed by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Gabriel Liberman ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Movant is allowed the following fees and expenses as a professional of the Estate:

Movant, a professional employed by Gunvant Mangubhai Patel,

Fees in the amount of \$12,480.00

Expenses in the amount of \$173.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the debtor.

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay the fees and costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

11. [22-20466](#)-C-13 ELIZABETH ANDRADE
[NLG](#)-1 Gary Fraley

OBJECTION TO CONFIRMATION OF
PLAN BY SAFE CREDIT UNION
3-21-22 [[15](#)]

Thru #12

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 64 days' notice was provided. Dkt. 20.

The Objection to Confirmation of Plan is sustained.

Creditor Safe Credit Union ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan treats the treats the March 1, 2022 payment to Creditor disparately from the other monthly post-petition payments while modifying the loan post petition repayment terms.
2. The plan fails to cure the Creditor's pre-petition arrears.

DISCUSSION

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

Notwithstanding whether the plan provides for the prepetition arrearage as Creditor argues, the debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Safe Credit Union, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

12. [22-20466](#)-C-13 ELIZABETH ANDRADE
[RDG](#)-1 Gary Fraley

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D GREER
4-21-22 [[22](#)]

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 33 days' notice was provided. Dkt. 25.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan impermissibly reduces the value of the secured claim of Carmax Auto Finance because the debt for the vehicle was incurred less than 910 days prior to the filing;
2. The plan does not provide for the priority portion of \$17,000 for the Internal Revenue Service's claim;
3. Debtor has not provided her 2021 income tax returns to the Trustee;
4. Debtor has not provided Trustee with an amended Schedule I showing the income and deductions from each of debtor's two employers;
5. The plan includes a non-standard provision for post-petition mortgage payment and late fee, however; debtor is current on post-petition mortgage payments to Creditor, Safe Credit Union.

DISCUSSION

The reduction of the secured claim of Carmax Auto Finance is an improper modification of a claim secured by a security interest in a vehicle that has been purchased within 910 days from the filing of the petition. That is reason to deny confirmation. 11 U.S.C. § 1325(a).

The debtor has not provided the trustee with all required tax returns. 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

13. [22-20471](#)-C-13 NATHANIEL JONES
[RDG](#)-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
4-21-22 [[32](#)]

Thru #14

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 33 days' notice was provided. Dkt. 35.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan has not been proposed in good faith and may not be feasible given the nonstandard provisions in Section 7.02 of the plan;
2. The plan relies on an objection to a secured claim even though the objection has not yet been filed by the debtor.
3. The plan is not feasible because the plan's proposed monthly payment does not provide for all of the Trustee's compensation and expense. The plan also relies on a contribution from the debtor's daughter, but a declaration from the daughter stating that she is willing and able to financially assist the debtor.
4. The plan modifies the rights of a holder of a secured claim secured only by a security interest in real property that is the debtor's principal residence.
5. The plan fail the liquidation test there are non-exempt assets available for distribution to general unsecured creditors and does not provide for interest at the Federal Judgement Rate.

DISCUSSION

The nonstandard provisions in Section 7.02 in the plan is an improper modification of a claim secured only by a security interest in real property that is the debtor's principal residence. That is reason to deny confirmation. 11 U.S.C. § 1322(b)(2).

Additionally, the plan relies on an objection to a claim to be heard and sustained by the court, however; a review of the docket shows that an objection to the claim of Real Time Solutions Inc. has not yet been filed by the debtor. Without the objection to the claim, the plan is not feasible because the plan fails to provide for payment of the claim.

The debtor has non-exempt assets totaling \$22,697.00. The plan provides for a 100 percent dividend to unsecured claims, however interest at the Federal Judgement Rate is not provided for. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(4).

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

14. [22-20471](#)-C-13 NATHANIEL JONES
[RMP](#)-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY REAL TIME RESOLUTIONS,
INC.
3-29-22 [[23](#)]

No Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 50 days' notice was provided. Dkt. 31.

The Objection to Confirmation of Plan is xxxxxx

Creditor Real Time Solutions, Inc. ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. The debtor fails to offer adequate protection to Creditor by not providing for payment of post-petition installment payments and pre-petition arrears;
2. Debtor relies on an objection to the Creditor's claim being sustained;
3. The plan is not feasible;
4. The debtor is unable to make payments under the terms of the plan.

DISCUSSION

At the hearing xxxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Real Time Solutions, Inc., having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is xxxxxx

15. [21-23489](#)-C-13 STACY HERMAN
[RWH](#)-1 Ronald Holland

CONTINUED MOTION TO CONFIRM
PLAN
2-18-22 [[30](#)]

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 47 days' notice was provided. Dkt. 35.

The Motion to Confirm is ~~xxxxxxx~~.

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 28) filed on February 14, 2022.

At the prior hearing on April 5, 2022 the Trustee and the Debtor agreed to continue the motion in order to determine whether:

1. The plan still does not provide for the Internal Revenue Service's priority claim and even with the \$48 increase in the monthly payment the plan payments would have to increase by at least \$119 a month in months 5 through 60 in order to pay the secured and priority claims and a zero percent dividend to general unsecured creditors.

DISCUSSION

At the hearing, ~~xxxxxxx~~

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Stacy Marie Herman, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is ~~xxxxxxx~~